

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1647 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MESH MOHANSINH KSHATRIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on December 17, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Umesh Mohansingh Kshatriya under the provisions of the said

Act.

2. The detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the petitioner-detenu and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Patel, learned advocate appearing for the petitioner, has restricted her arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. She has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on December 17, 1999 and on that very day, the order of detention was passed. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. Ms. Patel submitted further that the detenu was on Police remand at the time when the order of detention was passed and that the detaining authority has not indicated any compelling reason for passing the order of detention while the detenu is in custody. She, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on December 16, 1999. The same have been verified by the detaining authority on December 18, 1999 and the order is passed on that very day. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the

character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (*Bai Amina v. State of Gujarat & Ors.*, 1981 GLR 1186 and *Kalidas Chandubhai Kahar v. State of Gujarat & Ors.*, 1993(2) GLR 1659).

6. The detaining authority also observed that the detenu was on Police remand and he might be enlarged on bail and might continue his activities. However, the authority has not indicated any compelling reasons for passing the order while the detenu was in custody. There is no material to indicate about the release of the detenu on bail. The subjective satisfaction for the immediate need for detaining the petitioner cannot be considered as genuine. The order is, therefore, vitiated (*Sanjeev Kumar Aggarwal v. Union of India*, AIR 1990 SC 1202). In the above view of the matter, the petition deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated December 17, 1999, passed against the detenu is hereby quashed. The detenu-Umesh Mohansing Kshatriya is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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